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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/828,005	03/27/97	LAVON	G 6563

QM32/1109

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EXAMINER	
REICHLE,K	
ART UNIT	**PAPER NUMBER**
3761	16

DATE MAILED: 11/09/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
08/828005	Lavon et al
Examiner	**Group Art Unit**
Reichle	3761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

☒ Responsive to communication(s) filed on 11-23-98 & 5-3-99.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle,* 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 11-12, 14, 16-17, 20-22 & 28-81 is/are pending in the application.

Of the above claim(s) 16, 21-22, 28, 30-31, 34-36, 40-41, 45-81 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 11-12, 14, 17, 20, 29, 32-33, 37-39, 42-44 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The proposed drawing correction, filed on 11-23-98 is ☒ approved ☐ disapproved. in par

☒ The drawing(s) filed on 3-27-97 is/are objected to by the Examiner.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 11 9(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____.

Attachment(s)

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 10

☐ Interview Summary, PTO-413

☒ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

Office Action Summary

The request filed on 11-23-98 for a Continued Prosecution Application (CPA) under 37 CAR 1.53(d) based on parent Application No. 08/828,005 is acceptable and a CPA has been established. An action on the CPA follows.

This application contains claims directed to the following patentably distinct species of the claimed invention: the species of Figures 1 and 2 and the specific capillary suction specific surface area, hereinafter referenced to as CSSSA, the species of Figures 1 and 2 and the differential CSSSA, the species of Figures 3-4 and one of the specific CSSSA or differential CSSSA, the species of Figure 5 and one of the specific CSSS or differential CSSSA, the species of Figure 6 and one of the specific CSSSA or differential CSSSA, the species of Figure 7 and one of the specific CSSSA or differential CSSSA, the species of Figure 8 and one of the specific CSSSA or differential CSSSA, the species of Figures 9-11 and one of the specific CSSSA or differential CSSSA, the species of Figures 11-12 and one of the specific CSSSA or differential CSSSA, and the species of Figures 11 and 13 and one of the specific CSSSA or differential CSSSA.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable

thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CAR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

During a telephone conversation with Ms. Caroline Wayburg, P 45203 on September 3, 1999 a provisional election was made with traverse to prosecute the invention of the species of Figures 1-2 and the differential CSSSA, claims 11-12, 14, 17, 20, 29, 32-33, 37-39 and 42-44. Affirmation of this election must be made by applicant in replying to this Office action. Claims 16, 21-22, 28, 30, 31, 34-36, 40-41 and 45-81 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

The abstract would be in better form if on line 6, after "by an aperture created by the", -- at least one -- were inserted.

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on November 23, 1998 have been approved in part.

Figures 1-2, 4-5, 7 and 14-16 are approved. Figures 8 and 10 are still not approved because 42 as proposed in Figure 8 and the same structure in Figure 10, i.e. element 57, are denoted inconsistently. Also, 42, as shown in Figures 1-2, and Figures 3-4 and that in Figure 8 are different but are denoted by the same numeral. In Figure 3, 50 is shown as having 3 layers which the original drawings did not show and such is not shown in red ink and Figure 4 only includes 1 layer.

The drawings are objected to because in Figures 3-8, Applicant still uses the same numerals in these Figures as in Figures 1-2 to denote structure which is not the same, e.g. compare elements 42 and 43. In Figures 7-8 and 10, the numeral 55 is used to denote 3 different structures. In Figures 8 and 10 the peripery 57 should be denoted. Correction is required.

It is noted that the formal drawings filed 1-98 and 6-98 do not match the approved drawings.

Applicant's remarks on page 12, lines 13 et seq have been noted but are nonpersuasive in view of the objections and comments supra.

The disclosure is objected to because of the following informalities:1) the objection on page 2, lines 14-16 of a previous Office Action, Paper No. 4 are repeated.

2) On page 7, lines 28, 30 and 31 it appears "opening 41 "should be -- aperture 44 --.

3) The Summary of the Invention Section, i.e. a description of the claimed invention, and the invention as claimed are inconsistent.

The amendment filed May 3, 1999 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: claims 12, 14, 17, 20, 29, 37, 38, and 42.

Applicant is required to cancel the new matter in the reply to this Office action. Where is there support for the claimed mixtures of materials and the CSSSA-differentials? Applicant should point out the specifically on page 17, line 10-24;23 where such support for each claim limitation is.

Claims 12, 14, 17, 20, 29, 32, 33-39, 42 and 44 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. See discussion in preceding paragraph

Applicant's remarks on page 13, lines 1-30 have been considered but do not specifically address the specification objections and claim support discussed supra.

Claims 11, 12, 14, 17, 20, 29, 32-33, 37-39 and 42-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, lines 1-2, i.e. " a removeable absorbent core component", and line 8 and claim 33 appear to be inconsistent, i.e. on line 1, "a" should be -- at least one --. In regard to

claims 12 and 14, the language on line 2, i.e. "consisting" and "comprises", respectively, appear to be in consistent . This rejection also applies to claims 17 and 20, claims 17 and 32, claims 37 and 38 and claims 37 and 39. The claims would be in better form if before "removable second" and "removable third" (each occurrence), -- at least one -- were inserted to be consistent.

Applicant's remarks on page 13, fourth to last line - page 14, line 10 have been considered but do not specifically address the remaining claim informalities.

Applicant's remarks on pages 14-15, Section B, and pages 16-17, Section D, have been noted but are deemed moot in that nowhere on page 4 did Examiner reject the claims under 35 USC 102 over Lewis. To the contrary, page 4, first and second full paragraphs were clearly directed in response to Applicant's remarks.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 11, and now claims 41, and 43-44, are rejected under 35 USC 103(a) as being unpatentable over Lewis in view of Schiff and Marcus for the reasons set forth in the paragraph bridging pages 4-5 of the FINAL rejection, Paper No. 8.

Applicant's remarks on page 16, first and second full paragraphs have been considered but are deemed moot in light of the new grounds of rejection infra. It is noted however the rejection was not over Lewis in view of Murphy but Lewis in view of Schiff and Marcus for the

reasons set forth in the paragraph bridging page 7-8 of the first Office action. Similar remarks are applicable to remarks on pages 17-18, section E.

Applicant's remarks on page 14, line 14 - page 15, last line have been considered but are deemed narrower than the claim language. Specifically, in light of page 5, lines 31-36 of the specification , claim 11 requires at a mimimum, i.e. "comprising", "having", an absorbent core between the topsheet and backsheet comprising a first core component and a second component, the first core component being at least in the crotch region and the second core component being at least in the first waist region and at least the second core component being removeable. Lewis includes such because each ply of Lewis can be considered a component, or part of a component having at least two plys. The claims do not require the components to be separable from each other, the second component only to be in front waist region, the components to be of a single or specific number of layers, the first component to never be removed but the second component removed. These comments also apply to claim 33. Thus, Applicants remarks are not well taken.

Claims 11, and now claims 33 and 43-44, are rejected under 35 USC 103(a) as being unpatentable over Murphy, Lewis, Schiff and Marcus for the reasons set forth on page 7, lines 9-13 of Paper No. 4, and page 4, third to last line - page 5, line 7 but replacing "Lewis" with -- Murphy --, i.e. same rationale in Lewis prior art rejection applicable here to Murphy, and page 5, line 14 of the last Office Action, Paper No 8.

Applicant's remarks in Sections D and E on pages 16-18 have been considered but are deemed narrower than the claim language, see discussion supra of Applicant's remarks in

sections B and C which also apply here, and the teachings of Murphy , see portions cited in rejection which do not limit access to front sheet, see also, e.g., page 1, lines 28-36 and claim 1.

Claims 12, 14, 17, 20, 29, 32, 37-39, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schiff and Marcus or Murphy, Lewis, Schiff and Marcus as applied to claims 11, 33 and 43-44 above, and further in view of Dyer et al '207.

Applicant claims the specific compositions of the core components or the CSSSA differential which Lewis or Murphy do not teach. However, both Lewis and Murphy teach a component which is absorbent alone or in combination with the desire of economic efficiency. See Figure 2, Background of the Invention, column 9, line 11 - column 11, line 3, column 17, lines 48-57, column 19, lines 10-30, column 29, line 4- column 31, last line, Example II of Dyer et al. To make the absorbent core of core compoents having a composition as taught by Dyer et al on the Lewis or Murphy device would be obvious to one ordinary skill in the art in view of the recognition that such would provide economically efficient absorbency and the desirability of such in any absorbent article.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The other patents also teach claimed features of the instant invention.

Any inquiry concerning this communication should be directed to K. Reichle at telephone number (703) 308-2617.

K. Reichle:bhw
October 26, 1999

K.M. Reichle
Karin M. Reichle
Patent Examiner